IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8756 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHREE MOVIYA JUTH SEVA SAHAKARI MANDLI LTD.

Versus

DISTRICT REGISTRAR

Appearance:

1. Special Civil Application No. 8756 of 2003

MR SHIRISH JOSHI for Petitioner No. 1-2

MR PRACHHAK, ASSTT.GOVT. PLEADER for Respondent No. 1-2

MR BM MANGUKIYA for Respondent No. 1

MR BS PATEL for Respondent No. 3

MRS RANJAN B PATEL for Respondent No. 3

MR DILIPSINH PARMAR for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 05/09/2003

ORAL JUDGEMENT

1. Rule. Service of Rule is waived by ld. AGP Mr. Prachhak for Respondent Nos. 1 & 2 and ld. counsel Mr. B.S.Patel for Respondent No.3. With the consent of the ld.counsel appearing for the parties, matter is taken up for final hearing today.

2. Heard ld. counsel appearing for the parties. Ld. counsel have taken me through relevant facts of the case and relevant case law. Ld. AGP Mr. Prachhak, during the course of his oral submissions, has stated that the petitioners should be relegated again to the District Registrar (Co.Op.Societies), Rajkot because of the grievance of the petitioners that they were not offered an opportunity before passing the provisional winding up order.

3. On earlier occasion, the provisional winding up order was passed and the same was challenged by way of an appeal before the Addl. Registrar (Co.Op.Societies), (Appeal), Gandhinagar and the petitioners had remained successful in that proceedings. It is submitted by Mr. Prachhak that thereafter on various grounds, the provisional order has been passed against the petitioner no.1 Society. The petitioners, normally should satisfy if District Registrar (Co.Op.Societies), Rajkot offers an opportunity to them afresh. Appropriate directions also can be issued to the District Registrar to hear the petitioner no.1 Society and/or its counsel on merits denovo and he should be asked to decide the matter afresh without being influenced by the fact of the order passed earlier and even final order of winding up passed against the petitioner no.1 Society.

4. Mr. B.S. Patel, ld. counsel appearing for Rajkot District Co.Op.Bank submits that relevant record, according to the instructions received by him, is lying with the Society. So, if it required during the course of hearing, the Society shall co-operate by taking the relevant record to the Registrar so that Registrar while exercising his quasi -judicial powers can evaluate the totality of the facts which may be placed before him.

5. According to ld.counsel Mr. Sirish Joshi for the petitioners, the petitioner no.1 Society has no objection in appearing before the District Registrar (CS), but reasonable opportunity should be granted to the Society because the Society shall have to file a detailed reply qua the grounds mentioned in the notice to show cause and the grounds mentioned in the order while passing interim order for winding up. So, District Registrar (CS), Rajkot while dealing with and deciding the matter afresh and denovo will be under obligation to appreciate the validity of the grounds mentioned in the order of winding

up by way of interim arrangement and it should not be construed to be concluded against the petitioners or against the bank. The Bank in the capacity of OL has taken away certain record and same shall be handed over to District Registrar (CS), Rajkot. Undisputedly, the present petitioners have challenged the interim order of winding up passed on 2nd occasion or same was placed under suspension by the appellate authority. I have been appraised with the subsequent stage of proceedings and relevant dates of filing of the present writ petition, passing of the final order of winding up and grant of amendment to the present petition. I have also gone through the amendment carried out by the petitioner.

6. Without gong into the merits of rival contentions, ld. counsel appearing for the parties have not pressed for reasoned order and in view of the submissions made by ld. AGP Mr. Prachhak for respondent nos. 1 & 2, Mr. B.S.Patel, ld. counsel appearing for respondent no.3 and ld. counsel Mr. Sirish Joshi for the petitioner, the present petition can be disposed of by issuing certain directions in above terms as well as directions and observations made herein after. Hence, it would be appropriate that District Registrar (C.S.), Rajkot shall treat the order of interim winding up under suspension till the matter is heard and decided. District Registrar (C.S.) is present. The anxiety of ld. counsel B.S.Patel for the respondent no.3 Bank is that all the parties concerned should co-operate the hearing. This submission is accepted. The District Registrar shall decide the matter as expeditiously as possible after offering all reasonable opportunity afresh and decide the same within reasonable period of time in light of above observations. Society shall produce the list of members of the Managing Committee to the District Registrar (CS) within one week from today. Directions to all accordingly.

7. In view of above observations and directions, no further reasoned orders are required to be passed on merits and petition requires to be disposed of accordingly. Hence, petition stands disposed of accordingly. Consequently, the appeals pending before the appellate authority against the provisional as well as final order of winding up also stand disposed of having become infructuous.

8. Rule is made absolute accordingly. Direct Service is permitted.

5.9.2003 [C.K. BUCH, J]

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